



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001466
First-tier Tribunal Nos:
HU/50936/2022 &
IA/01398/2022

Extempore

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 October 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

NKAI
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present and not represented

For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 4 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of Resident Judge J W Phillips dismissing her appeal against a decision of the Secretary of State to refuse her entry clearance as the spouse (“the sponsor”) of a person recognised as a refugee in the United Kingdom. That was inevitably a human rights claim.
2. There is no dispute that the appellant is married to the sponsor or that their relationship is genuine and subsisting. The reason that the application was refused was that the appellant had, as part of her application, submitted false documents. It was maintained on appeal that these were not false and that the sponsor who is based in the United Kingdom and who had provided the documents, was the victim of a scam.
3. The matter came before Judge Phillips sitting at Newport on 11 November 2022 where he heard from Mr Dieu, Counsel instructed by Axis Solicitors for the appellant. The respondent was represented by a Presenting Officer. The judge heard evidence from the sponsor and submissions from both representatives. The judge also had before him a stitched bundle which included the appellant’s skeleton argument and the respondent’s review.
4. The judge noted [11] that there was a single issue in the appeal: did the appellant through the sponsor submit documents which were false? The judge concluded that that was so, finding [14] “I am however satisfied on the balance of probabilities that the Sponsor was aware that a false document was submitted”. He gave reasons for that and found [15] that the appellant through the sponsor knowingly submitted a false document in support of the application. He found on that basis, Mr Dieu raising no separate human rights issue, that he appeal must be dismissed. He did however make some observations about the case, hoping that the dismissal of the appeal would not be held adversely against the appellant for any future application.
5. The appellant sought permission to appeal against that decision on the grounds that the judge had erred in failing to carry out a proportionality exercise outside the confines of Rule 320(7A) and (B) (sic) despite the appeal falling under the aegis of Article 8 of the Human Rights Convention; and, further erred in engaging in an implied proportionality finding in respect of the findings that he had made without considering the impact of Rules 9.8.1 and 9.8.7 of Part 9 of the Immigration Rules whereby the deception finding would result in a mandatory ten year ban on any grant of entry clearance, thus rendering exercise of family reunion impossible within the acceptable timescale.
6. In granting permission Judge Lindsley stated that the grounds were arguable but noted that it had been recorded at paragraph 8 of the Judge’s decision that there was no separate Article 8 aspect to the appeal. She gave directions for the appellant to address this and for a witness

statement to be provided by Mr Dieu as to what, if anything, was conceded before the First-tier Tribunal with a copy of contemporaneous notes attached.

7. The appellant was neither present nor represented at the hearing. That is unsurprising in the light of the request for an adjournment which was made by the appellant's now representatives, Lifeline Options, who applied for an adjournment yesterday [3 October 2023]. That request was made on the basis that, owing to unforeseen circumstances, Lifeline Options were unable to represent their client, the sponsor, in his wife's family reunion case as the author, Mr Forbes, was the only qualified representative in the firm and would be travelling out of the country on the same day.
8. I refused that application in an order stating that there was no sufficient explanation as to when it became clear when Lifeline Options would not be able to represent; no explanation had been given why Counsel could not have been instructed; no evidence had been supplied of the attempts made by the sponsor to obtain alternative representation; or, why he was unable to attend the hearing. It was also observed that at that point there had been no attempt to comply with direction that a statement from Mr Dieu be served.
9. There was then a further application for permission which was received today in which further details were given. In summary, it is said that Mr Forbes explained from the outset that he would be unable to attend and had tried to explain to the appellant that this was the case, corresponding with the sponsor and advising him to seek alternative legal Counsel. There were then discussions when the sponsor travelled to Ethiopia to meet the appellant who had fled there following the war in Sudan. For whatever reason there was a breakdown between the sponsor who initially declined to be further represented withdrawing his instructions from Mr Forbes in the light of the requirement for the statement of truth to be served.
10. I have considered carefully whether in the light of this fuller explanation and the recent production of the statement from Mr Dieu as to whether I should adjourn the matter bearing in mind that I am here concerned with the appellant and not just the sponsor. To a significant extent the fact that the appellant is not represented here today is a fault of decisions taken by the appellant and the sponsor. Limited attempt seems to have been made to obtain alternative representation and it is unclear why the witness statement from Mr Dieu was only produced today.
11. Further and in any event, there are significant problems with the appellant's case. It was said in the appellant's skeleton argument, put before the Judge, that the only issue was whether false documents had been submitted. It was not submitted that, for example, it would

nonetheless be a breach of Article 8 for entry clearance to be refused, notwithstanding the use of false documents.

12. There is no challenge to the finding by the Judge that false documents had been used or importantly to the fact that the appellant knew about that, a finding made at paragraph 15 of the decision. Further, the appeal does not appear to have been prepared on the basis of any Article 8 arguments than are present in the skeleton argument; they are not recorded in the judge's summary of the submissions made. Nor is there evidence in the witness statements of a type one would expect if the argument that despite the use of false documents entry clearance should nonetheless have been granted, such as descriptions of the hardship that would arise were entry clearance not granted.
13. I bear in mind also what was held in **Mumu**, a
14. nd held in **TC (PS compliance - "issues-based" reasoning) Zimbabwe [2023] UKUT 164**, a decision of the President and the President of the First-tier Tribunal. In the latter the Upper Tribunal noted that it is a requirement on the part of both parties in the FtT to identify the issues in dispute and to focus on addressing the evidence and law relevant to those issues in a particularised yet concise manner. Applying those principles I see that here there was no such focus on Article 8 either outside the rules or not.
15. Mr Dieu's witness statement is unhelpful in that he simply says that he does not recall whether he made submissions on article 8. There is no reference to it in the notes which he has adduced and given that the hearing took place on 11 November 2022 and his witness statement is dated 21 September 2023, nearly a year later, it is perhaps unsurprising that he does not recall what happened.
16. The only argument put forward by the appellant was that the judge failed to deal with Article 8 when he was asked to do so. That relies on two things, one, there being evidence that this point was raised, and second, that he simply ignored it. There is in reality in light of what I have already recorded that Article 8 was not raised as a separate issue, consistent with the concession referred by the judge. In the circumstances it was not for him to raise the point.
17. Absent any evidence as to the impact on the appellant and sponsor of the refusal of entry clearance, or to call Mr Dieu as a witness that Article 8 was raised, there is simply no proper basis on which this appeal could have succeeded. It is wholly unlikely that an experienced judge such as Resident Judge Phillips would not have dealt with Article 8 had it in fact been raised and had there been no concession on that point. It is clear from his decision that what he meant by saying that there was nothing outside the Rules is that nothing was submitted that it would be disproportionate to refuse entry clearance. Further, it cannot be said in

this case that there was any attempt at findings of proportionality. What the judge said about the making of a further application was nothing more than an aside. The judge was simply not addressed on article 8, nor was he under a duty to consider it.

18. As there is no possible merit in the grounds of appeal, I was not satisfied that it was in the interests of justice to adjourn as there was no indication as to how any appeal, on the grounds as drafted, could succeed.
19. Accordingly for these reasons, I refused to adjourn the appeal and I also am satisfied that there is no merit in the grounds of appeal. I dismiss the appeal.
20. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involved the making of an error of law and I uphold it.

Signed

Date: 11 October 2023

Jeremy K H Rintoul
Upper Tribunal Judge
Immigration and Asylum Chamber